

Indiana Department of State Revenue

Revenue Ruling #2005-03ST

March 2, 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales and Use Tax-Imposition

Authority: I.C. 6-2.5-3-2(a), I.C. 6-2.5-1-2, I.C. 6-2.5-1-2, I.C. 6-2.5-4, I.C. 6-2.5-4-1(b), I.C. 6-2.5-4-1(d), I.C. 6-2.5-4-2(b)(1), I.C. 6-2.5-4-2(b)(1), I.C. 6-2.5-5-5-8, I.C. 6-2.5-2-1.

Taxpayer requests that the department rule on the proper treatment of Taxpayer and the concerns with which Taxpayer conducts business for Indiana state gross retail ("sales") and use tax purposes.

STATEMENT OF FACTS

Taxpayer is a corporation providing an online shopping and information service to the general public, electronically linking consumers and local retailers. A member of the general public ("Customer") wishing to use the service must register with the taxpayer. There is no charge for registration or use of the service.

A local Retailer's listing on the taxpayer's website is free and includes a free web-link to the Retailer's e-commerce website. A retailer may, in addition to receiving a free basic listing, sign up for enhanced listing features (e.g., listing in bold or red letters), advertising, the creation and maintenance of an e-commerce website by Taxpayer, and to provide free delivery service by a Deliverer for orders over an amount ("Breakpoint") determined by the retailer.

Upon accessing the website maintained by Taxpayer, a Customer encounters a "Mall Directory", which contains a listing of the various categories of products that may be ordered as well as advertising. Clicking on a category, e.g., "Books", leads to a "Books Main Street", which lists local Retailers (Borders, Barnes & Noble, etc.) from which books may be ordered. Clicking on a listed Retailer, in turn, typically takes the Customer to the Retailer's e-commerce website, where the customer can review the inventory and select the item(s) to be purchased. Upon completion of shopping, the Customer sends an order to Taxpayer, which, in turn, sends the order via internet to a Deliverer close to the Customer and the Retailer from which items are ordered. A Customer is free to request the services of a particular Deliverer, subject to availability.

Deliverers are independent contractors, often housewives or single mothers that are engaged in the business of providing personal shopping, fulfillment and courier services for Customers. Taxpayer anticipates that there will be approximately 125 Deliverers providing services in the area.

A Deliverer who receives notice of an order from Taxpayer is free to accept or reject the order. If rejected, Taxpayer sends the order to another Deliverer, and so on, until the order is accepted. A Deliverer who accepts an order drives to the Retailer and purchases the items ordered on behalf of the Customer, paying the Retailer the retail price of items purchased plus applicable sales tax. The Deliverer may call or e-mail the Customer from the Retailer's location and suggest an alternative to an item ordered if the item is out of stock, if a similar item is on sale, etc. The Deliverer then delivers the order to the Customer along with the original sales receipt from the Retailer.

Customers only make payments to Deliverers. Customers make no payments to Taxpayer, nor do they make payments to Retailers. Typically a Customer pays a Deliverer: (a) reimbursement for the price of the items (including applicable sales tax) which the Deliverer purchased on the Customer's behalf; (b) a fee for the Deliverer's services; and (c) a tip (optional).

Deliverers receive the following payments from Customers: (a) reimbursements for the retail price of items purchased (including sales tax) on behalf of the Customers; (b) fees for their services (Delivery Fees); and (c) tips. In addition, Deliverers receive payments for their services from Retailers who sign up to advertise for free Deliverer service on Taxpayer's website. A general retail Free Service Retailer pays a Deliverer an amount equal to 10% of the retail price of items on orders below the breakpoint, and that amount plus a Delivery Fee of \$4.95 on orders at or above the Breakpoint.

All Retailers only receive payment for items that Deliverers purchase on behalf of Customers from the Deliverers. All Retailers collect sales tax on the full retail price of items which Deliverers purchase on behalf of Customers.

Taxpayer, the Deliverers and the Customers view the business as a personal shopping service. What Customers desire, and what they get, is a personal valet to perform shopping services.

Deliverers do not maintain any stock of goods, do not hold themselves out as merchants, pay applicable sales tax on the price of items purchased from Retailers on behalf of Customers, and provide Customers with the original sales slip on all purchases. Furthermore, Deliverers do not "mark-up" the Retailers' price of such items, and only receive reimbursement from Customers for the retail price of items (including tax) purchased for the Customers.

DISCUSSION

I.C. 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. I.C. 6-2.5-3-2(a) imposes use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction as defined for sales tax purposes, regardless of

the location of that transaction. A “retail transaction” is defined in I.C. 6-2.5-1-2 as a transaction that constitutes “selling at retail”, a “wholesale sale” or that is otherwise described as a transaction that is otherwise described in I.C. 6-2.5-4. These provisions impose sales and use tax on certain defined services. None of those services, however, include the type of personal shopping and fulfillment services provided by the Taxpayer or the Deliverer.

I.C. 6-2.5-4-1(b) states that a person is engaged in “selling at retail” when:

In the ordinary course of his regularly conducted trade or business, he:

- (1) Acquires tangible personal property for the purpose of resale; and
- (2) Transfers the property to another for consideration.

A person is not selling at retail if making a “wholesale sale”. I.C. 6-2.5-4-1(d). A person is making a “wholesale sale: when he “sells tangible personal property. . . to a person who purchases the property for the purpose of reselling it without changing its form.” I.C. 6-2.5-4-2(b)(1).

I.C. 6-2.5-5-5-8 provides that transactions involving tangible personal property are exempt from tax “if the person acquiring the property acquires it for resale. . . in the ordinary course of the person’s business without changing the form.

Indiana sales of tangible personal property are subject to the Indiana sales tax unless they qualify for a statutory exemption. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state. I.C. 6-2.5-2-1.

I.C. 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

- (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

In the fact situation submitted by the Taxpayer, the retail transaction or transfer of tangible personal property for consideration is between the Retailer and the Customer. The Customer purchases an item such as a sweater or book from the Retailer. The sales tax is properly imposed on this transaction. The Retailer has the statutory duty to collect the sales tax from the Customer or his agent and remit the sales tax to the state unless the transaction or use of the item qualifies for a statutory exemption. If the Retailer receives a valid exemption certificate from the Customer, the Retailer is relieved of the duty to collect and remit the sales tax.

The Taxpayer does not transfer any tangible personal property for consideration in a retail transaction. Rather, it provides services. It provides advertising opportunities to Retailers. It allows Customers to use its services and website. It facilitates retail sales by connecting

Customers with Retailers. It connects Customers with Deliverers. None of these services are listed as a taxable service in the statute. The Taxpayer does not engage in retail transactions.

The Deliverers provide personal shopping and fulfillment services. These are not services defined as taxable services in the statute. The Deliverers do not buy items in a wholesale sale and resell it to the Customers. The Deliverers act as agents for the Customers in their transactions with the Retailers. The Deliverers step into the shoes of the Customers. Deliverers receive specific directions from Customers as to exactly which item to purchase, where to purchase the item, and the price to pay for the item. If any change is necessary, the Deliverer calls the Customer to receive specific authority to make the change in item, cost, or location of purchase. The Deliverer pays for the item and accepts title on behalf of the Customer who reimburses the Deliverer. The fee paid to the Deliverer for picking up and delivery of the item is not subject to sales tax.

Customers directly reimburse the Deliverers for the consideration and sales tax paid. Any additional fees such as delivery charges and tips are for the non-taxable personal shopping service.

This nontaxable delivery fee is distinguishable from a situation where the delivering party is not the true agent of the buyer. An example of a taxable delivery fee would be a buyer wishing to buy gravel. The purchaser would call a trucking company which would obtain the gravel and deliver it to the buyer. In that taxable situation, the trucking company would have the freedom to choose the retailer from whom to buy the gravel. The trucking company is an independent contractor, not the true agent of the buyer.

RULING

1. Taxpayer has no sales or use tax obligations in connection with Customers' use of its service or website, Deliverers' provision of services to Customers, or Deliverers' purchases from Retailers on behalf of Customers.
2. Deliverers are obligated to pay sales tax to Retailers on the retail price of taxable tangible personal property which Deliverers purchase from Retailers on behalf of Customers.
3. Deliverers who make purchases on behalf of exempt organization Customers may, if authorized to do so by such Customers, issue exemption certificates for purchases made on behalf of the Customers.
4. Deliverers are not obligated to collect sales or use tax on the amounts received from Customers as reimbursements for amounts paid to Retailers in purchasing items on behalf of the Customers, on Delivery Fees, or on tips.
5. Retailers are obligated to collect sales tax on the retail price of all taxable tangible personal property sold to Deliverers on behalf of customers, but are not obligated to collect sales or use tax on amounts which Deliverers receive from Customers.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.